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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

JORGE LUIS GUERRA-ZAMUDIO,

Defendant and Appellant.

B209639

(Super. Ct. No. GA070706)

APPEAL from a judgment of the Superior Court of Los Angeles County.
Jacqueline H. Nguyen, Judge. Affirmed.

Jorge Guerra-Zamudio, in pro. per.; Richard Jay Moller, under appointment by the
Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

A jury convicted Jorge Luis Guerra-Zamudio of driving under the influence and causing injury (Veh. Code, § 23153, subd. (a))¹, driving with a blood alcohol level of 0.08 or more and causing injury (§ 23153, subd. (b)), leaving the scene of an accident that resulted in injury (§ 20001, subd. (a)), driving with a suspended license (§ 14601.5, subd. (a)), possessing an open container of alcohol while driving (§ 23222, subd. (a)), and driving without evidence of financial responsibility (§ 16028, subd. (a)). The jury also found appellant caused bodily injury to Martin Callan and great bodily injury to Caroline Callan. The trial court sentenced appellant to five years and four months in prison.

Appellant's convictions were based on an August 18, 2007 accident in which appellant ran a stop sign and collided his car with a car driven by Martin Callan. Callan's ribs, neck, and lips were injured. Six-year-old Caroline Callan suffered the loss of her two front teeth, facial lacerations, and bruises. Appellant and his passengers fled on foot, but witnesses detained appellant and one passenger a short distance away. Appellant's blood alcohol measured 0.13 percent approximately three hours after the accident.

Appellant filed a timely appeal. We appointed counsel to represent appellant on appeal. After examination of the record, counsel filed an opening brief raising no issues and asking this court to independently review the record. On November 14, 2008, we advised appellant he had 30 days within which to personally submit any contentions or issues he wished us to consider.

Appellant filed a supplemental letter brief asking this court to consider the issues of prosecutorial misconduct, instructional error, procedural error, and a violation of due process. Appellant incorporated by reference the points and authorities filed in the trial court in support of his motion for a new trial. Appellant thus contends that the prosecutor committed misconduct by requesting that the trial court instruct with both CALCRIM No.

¹ Unless otherwise noted, all further statutory references pertain to the Vehicle Code.

2140 and No. 2141, the trial court erred by giving both instructions, and the “inconsistent theories” set forth in these instructions violated appellant’s right to due process.

“[A] trial court in a criminal case is required—with or without a request—to give correct jury instructions on the general principles of law relevant to issues raised by the evidence.” (*People v. Mutuma* (2006) 144 Cal.App.4th 635, 640.)

CALCRIM No. 2140 set forth the prosecution’s theory of appellant’s liability for count 3, which alleged his violation of section 20001, subdivision (a): appellant was involved in an accident while he was driving his car, he knew that the accident caused injury to another person or that it was probable another person had been injured, and appellant failed to stop at the scene, provide reasonable assistance to any person injured in the accident, or show his driver’s license or provide specific identifying information to the victims or a peace officer.

Appellant’s sole theory of defense was that he was not driving his car at the time of the accident. He told the law enforcement officers who responded to the scene he was not driving and he presented the testimony of a witness who saw appellant’s companion hand appellant a set of keys as they attempted to flee the scene. Appellant also expounded this theory in his opening statement and his argument to the jury. If the jury had accepted appellant’s version of the facts, it would have provided appellant with a complete defense to every charge except count 3. The duties and liability created by sections 20001, 20003, and 20004 apply equally to the actual driver of a vehicle and to the vehicle’s owner who is present in the vehicle at the time of an accident and who has full authority to direct and control its operation. (*People v. Monismith* (1969) 1 Cal.App.3d 762, 766.) CALCRIM No. 2141 addresses the liability imposed upon such a non-driving owner, which was precisely the factual scenario promoted by appellant. The instruction told the jury it could alternatively convict appellant of the crime charged in count 3 if appellant “owned and was riding as a passenger in a vehicle involved in an accident,” he “had full authority to direct and control the vehicle even though another person was driving the vehicle,” he knew that the accident caused injury to another person

or it was probable another person had been injured, and appellant failed to “cause the driver of the vehicle to stop” at the scene, or appellant failed to provide reasonable assistance to any person injured in the accident or show his driver’s license or provide specific identifying information to the victims or a peace officer. CALCRIM Nos. 2140 and 2141 thus set forth equivalent, legally valid, alternative paths by which the jury could find appellant guilty of a violation of section 20001, subdivision (a). Moreover, the court incorporated in each of these instructions a unanimity provision requiring the jury to unanimously agree “as to whether defendant was the driver or the owner/passenger in determining the evidence as to Count 3.”

In re Sakarias (2005) 35 Cal.4th 140, upon which appellant relies, is completely inapposite. There, the prosecutor separately tried two defendants for the same murder of a single victim. In the co-defendant’s trial, the prosecutor attributed the fatal blows to the victim solely to the co-defendant, but subsequently, in *Sakarias*’s trial, the prosecutor attributed the same fatal blows solely to *Sakarias*. The Supreme Court concluded the prosecutor acted improperly “by intentionally and without good faith justification arguing inconsistent and irreconcilable factual theories in the two trials, attributing to each petitioner in turn culpable acts that could have been committed by only one person.” (*Id.* at p. 145.) In appellant’s case, however, the prosecutor did not urge contradictory theories, but maintained a single consistent theory that appellant was driving the car. It was instead appellant’s defense theory that he was not driving that necessitated instruction with CALCRIM No. 2141, as well as CALCRIM No. 2140. Indeed, the prosecutor repeatedly urged the jury to reject the defense argument that someone other than appellant was driving. Given the state of the evidence, the trial court would have been required to give both instructions even without a request by the prosecutor because the evidence placed in issue the identity of the driver. If the jury had adopted appellant’s version of the facts and the trial court had not instructed with CALCRIM No. 2141, appellant would have received an underserved acquittal in contravention of the law.

In any event, it is obvious from the jury's verdicts convicting appellant of the remaining counts—which each required a finding that appellant was in fact driving—that the jury found appellant was driving when his car collided with the Callan car. Accordingly, it is clear beyond a reasonable doubt that appellant was not prejudiced by instruction with both CALCRIM Nos. 2140 and 2141.

We have also examined the entire record and are satisfied that appellant's counsel has fully complied with his responsibilities and that no arguable issues exist. (*People v. Kelly* (2006) 40 Cal.4th 106, 109-110; *People v. Wende* (1979) 25 Cal.3d 436, 441.)

DISPOSITION

The judgment is affirmed.

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WEISBERG, J.*

We concur:

MALLANO, P. J.

ROTHSCHILD, J.

* Retired Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.